

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24880 of 2013

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Ashok Jha Son Of Late Mahendra Narayan Jha Resident of Village- Ward No. 1,
Block Road, P.S.- Thakurganj, District- Kishanganj

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate Kishanganj
3. The Sub-Divisional Officer Kishanganj, District- Kishanganj
4. The Circle Officer Thakurganj, District- Kishanganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. MUKESH KUMAR JHA

For the Respondent/s : Mr. YOGENDRA PD. SINHA

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 11-08-2017

Heard Mr. Mukesh Kumar Jha, learned counsel
for the petitioner and Mr. Rakesh Ambastha, learned AC to AAG-7,
learned counsel for the State-respondents

The present writ application has been filed for
quashing the Notice contained in Memo No. 1823 dated 07.11.2013
issued by Circle Officer, Thakurganj, as contained in Annexure-4,
whereby the petitioner has been directed to remove his residential
house, allegedly situated within the block premises, within two days,
failing which, it has been directed that the encroachment shall be
removed by the administration and the cost of removal of the same
will be recovered from the petitioner.



It is submitted by learned counsel for the petitioner that the land appertaining to Khata No. 92, Plot No. 2459 measuring an area of 1 acre 82 decimals belongs to ex-landlord which was orally settled in favour of the grand father of the petitioner, namely, Hanuman Jha in 1935 as the grand father of the petitioner was Priest of ex-landlord and since then the ancestors of the petitioner and now the petitioner are residing there and the petitioner is paying rent. During revisional survey the land in question was wrongly recorded in the name of one Tejpal Sarawagi and on the basis of that he started raising claim over the land for which proceeding under Section 144 Cr.P.C. was initiated in the year 1998 vide Case No. 390M/98, but subsequently the proceeding was dropped vide order dated 7.12.1998 and the possession of the petitioner was found over the land in question. Subsequently, the petitioner, in order to avoid the litigation, amicably settled the dispute with the said Tejpal Sarawagi and the petitioner remained in possession over the land in question. On 5.12.1980 said Tejpal Sarawagi, in pursuance to an agreement, allowed the mother of the petitioner to reside over 20 decimals of land, but, all of a sudden, on 7.11.2013, respondent no. 4, Circle Officer, Thakurganj, directed the petitioner to remove the encroachment within two days, failing which, it was directed that the same shall be removed by the administration, which gets reflected



from Annexure-4. It is further submitted by learned counsel for the petitioner that no proceeding prescribed under the Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act') has been initiated. The house of the petitioner is still situated on the land in question.

A counter affidavit has been filed on behalf of respondent nos. 2 to 4 to the effect that the land in question was acquired by the State of Bihar, though the specification of the same has not been brought on record. The part of the land is recorded in the name of Tejpal Sarawagi, though the petitioner claims that Tejmal Sarawagi executed agreement with the petitioner. Though, the petitioner firstly claims that the grand father of the petitioner took oral settlement in 1935, but there is no documentary proof to that effect.

Having heard the learned counsel for the parties, this Court is of the view that in a petition under Article 226 of the Constitution of India the High Court has the jurisdiction to try the issue both on facts and law. Exercise of jurisdiction is, no doubt, discretionary but discretion must be exercised on sound judicial principles. When the petitioner raises complex question of law and facts, which may, for their determination, require oral evidence to be taken, then in that case the court should restrain to exercise the discretionary remedy.



The Apex Court has elaborated the same view in the case of Real Estate Agencies Vs. State of Goa and Ors., reported in (2012) 12 Supreme Court Cases 170, where certain development works/raising construction over some plot of land was in dispute though the title over the land was not in dispute, but it was held that the writ court may refuse to interfere if in the process of determination of the issue, the disputed question of fact or title would be required to be adjudicated. Paragraph 16 reads as follows:-

“16. A reading of the order of the High Court would go to show that its refusal to interdict the developmental works undertaken or about to be undertaken is on the ground that the Petitioner has an efficacious alternative remedy, i.e. a suit for injunction. The Writ Court exercising jurisdiction under Article 226 of the Constitution is fully empowered to interdict the State or its instrumentalities from embarking upon a course of action to detriment of the rights of the citizens, though, in the exercise of jurisdiction in the domain of public law such a restraint order may not be issued against a private individual. This, of course, is not due to any inherent lack of jurisdiction but on the basis that the public law remedy should not be readily extended to settlement of private disputes between individuals. Even where such an order is



sought against a public body the Writ Court may refuse to interfere, if in the process of determination disputed questions of fact or title would require to be adjudicated.”

High Court exercises very wide power under Article 226 of the Constitution of India in exercise of the said power, it can issue a writ, direction or order for enforcement of fundamental rights as also for any other purpose. At the same time, however, High Court is not expected to convert itself into a fact finding authority or a court of first instance in cases where seriously disputed question of facts or mixed questions of fact and law are involved.

In the present case, the petitioner is claiming the land in question firstly by way of oral settlement by ex-landlord and secondly through an agreement with the recorded tenant Tejpal Sarawagi whereas the respondent-State is claiming the land by way of acquisition for running Thakurganj Circle Office. Hence, the question of title and possession over the land can only be decided through a suit by a competent Civil Court. Counter affidavit filed on behalf of respondents does not suggest that any proceeding under the Bihar Public Land Encroachment Act has been initiated or the fact that the land in question is recorded as a public land in the revenue records. Hence, there is no need for quashing the impugned notice, as



contained in Annexure-4, since the petitioner claims that the house in question is still situated on the land in question and the same has not been controverted by the respondent-State in the counter affidavit.

Accordingly, this writ application is disposed of with liberty to the parties to seek remedy before an appropriate forum.

It is made clear that Circle Officer, Thakurganj ought to have initiated a proceeding, if it appeared that the land in question is a public land, under the provisions of Bihar Public Land Encroachment Act. However, the present order will not preclude, respondent no. 4, Circle Officer, Thakurganj, from initiating a proceeding in accordance with the provisions of the Act.

(Dinesh Kumar Singh, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.09.2017
Transmission Date	NA

